

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 1:05CR461
	)	
BEURN DAPHNE FERDINAND,	)	
	)	
Defendant.	)	
	)	
		<u>PLEA AGREEMENT</u>

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, Louis J. Ruffino, Special Assistant United States Attorney, the defendant, BEURN DAPHNE FERDINAND, and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

**1. Offense and Maximum Penalties**

The defendant agrees to plead guilty to counts 1 and 11 of the indictment, which charge the defendant with conspiracy to commit wire fraud and aggravated identity theft, respectively, in violation of Title 18, United States Code, Sections 1349 and 1028A. The maximum penalties for conspiracy to commit wire fraud are a term of 30 years of imprisonment, a fine of \$1 million, full restitution, a special assessment, and five years of supervised release. The maximum penalties for aggravated identity theft are a term of imprisonment of two years, which must be imposed consecutively to any term of imprisonment imposed on Count 1; a fine of \$250,000; full restitution; a special assessment and one year of supervised release. The defendant understands that the supervised release term is in addition to any prison term the defendant may receive, and that a

violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

## **2. Factual Basis for the Plea**

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

## **3. Assistance and Advice of Counsel**

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

## **4. Role of the Court and the Probation Office**

The defendant understands that the Court has jurisdiction and authority to impose any

sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738, the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

#### **5. Sentencing Guideline Factors**

The parties agree to jointly recommend that the United States Probation Office and the Court find that:

- a. The amount of actual loss, for purposes of Section 2B1.1 of the Sentencing Guidelines, was more than \$200,001 and less than \$400,000, and
- b. The number of victims who suffered actual financial loss, for purposes of Section 2B1.1 of the Sentencing Guidelines, was more than 10, but fewer than 50.

The United States agrees to recommend to the Court that if the United States Probation Office determines that the defendant has accepted responsibility for her offenses, the Court decrease her offense level by three levels under Section 3E1.1(b) of the Sentencing Guidelines.

**6. Waiver of Appeal, FOIA and Privacy Act Rights**

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

**7. Waiver of DNA Testing**

The defendant also understands that Title 18, United States Code, Section 3600 affords a defendant the right to request DNA testing of evidence after conviction. Nonetheless, the defendant knowingly waives that right. The defendant further understands that this waiver applies to DNA testing of any items of evidence in this case that could be subjected to DNA testing, and that the waiver forecloses any opportunity to have evidence submitted for DNA testing in this case or in any post-conviction proceeding for any purpose, including to support a claim of innocence to the charges admitted in this plea agreement.

## **8. Special Assessment**

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

## **9. Payment of Monetary Penalties**

The defendant understands and agrees that, pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of her financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

## **10. Restitution for Offense of Conviction**

The defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. If any conspirator also is convicted, both the defendant and the co-conspirator will be jointly and severally liable for any restitution ordered. At this time, the Government is aware that the following victims have suffered approximately the following losses:

HSBC Household Bank: \$34,602.42

Sears/Citibank: \$ 124,243.69

American Express: \$ 58301.69

Bank of America: \$ 41.23

Chase Bank: \$ 1152.09

Discover: \$501.50

Saks Fifth Avenue: \$8,872.00

GE Consumer Finance: \$3,063.79

MBNA: \$8000.00

Dell Computer Corporation: \$1588.00

Verizon Wireless: \$250.00

Rite Aid Corporation: \$213.44

Payless Shoe Source: \$63.99

Centuria Group: \$2700.15

Shell Oil Corporation: \$40.10

Sprint PCS: \$402.98

Cingular Wireless: \$120.00

Education Direct: \$213.00

**11. Immunity from Further Prosecution in this District**

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the information or statement of facts.

**12. Prosecution in Other Jurisdictions**

The United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction.

Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the United States Attorney's Office for Eastern District of Virginia agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

**13. Dismissal of Other Counts**

As a condition of the execution of this agreement and the Court's acceptance of the defendant's plea of guilty, the United States will move to dismiss the remaining counts of the indictment against this defendant.

**14. Defendant Must Provide Full, Complete and Truthful Cooperation**

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

**15. Motion for a Downward Departure**

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

## **16. Forfeiture Agreement**

The defendant agrees to forfeit all interests in the following specific property:

- 1) One silver colored watch “Cartier” bearing the following identifying numbers 1340 and PL295000;
- 2) One silver colored watch “Cartier” bearing the following identifying numbers 1660 and MG316433;
- 3) One gold colored watch “Cartier” bearing the following identifying numbers 2364 and MG260452;
- 4) One silver colored watch “Chopard” bearing the following identifying numbers 27/8236, 476797 and 8236;
- 5) One silver colored watch “Cartier” bearing the following identifying numbers 502004CD and 2485;
- 6) One silver Bracelet “Cartier” bearing the following identifying numbers 7338 PB and 2420;
- 7) One gold/silver colored watch “Omega” bearing the following identifying numbers 56296306;
- 8) One red velveteen pouch labeled with Cartier name; containing one silver colored bracelet labeled with “Cartier” name, stamped on the inside with the following numbers 750 19 68311;
- 9) Dell Flat screen TV, approximately 32 inch, service tag removed;
- 10) Dell flat screen TV, service tag # 4HPPD51;
- 11) Dell Flat screen TV, service tag # G8MVL31;
- 12) Dell home theater speaker system, serial # CN032523-69800-3B3-0960;
- 13) Dell W3000 speakers, gray;
- 14) Dell Flat Panel Monitor, serial # E173FPP;
- 15) Dell Flat Panel Monitor, serial # E193FPP;
- 16) Dell Flat screen TV, serial # KR0F3166483243B509XL; and
- 17) Dell Flat screen TV, serial # CNOG3394-217803.

The defendant further agrees to waive all interest in the assets in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.



The defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case.

#### **14. Waiver of Further Review of Forfeiture**

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also waives any failure by the Court to advise the defendant of any applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J). The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant understands and agrees that all property covered by this agreement is subject to forfeiture as proceeds of illegal conduct.

#### **15. Breach of the Plea Agreement and Remedies**

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered

pursuant to this agreement;

- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and
- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on

“substantial assistance” as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements.

The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

**16. Nature of the Agreement and Modifications**

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant’s counsel. The defendant and her attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

\_\_\_\_\_  
Respectfully submitted,

Paul J. McNulty  
United States Attorney

By: \_\_\_\_\_  
Louis J. Ruffino  
Special Assistant United States Attorney

APPROVED:

\_\_\_\_\_  
Jack Hanly, Approving Supervisor  
Virginia State Bar No. 23969

Date of Approval:

\_\_\_\_\_

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending indictment. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: \_\_\_\_\_  
\_\_\_\_\_  
Beurn Daphne Ferdinand  
Defendant

Defense Counsel's Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: \_\_\_\_\_  
\_\_\_\_\_  
Crystal A. Meleen, Esquire  
Counsel for the Defendant